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SAN BERNARDINO and SAMUEL  
7 FULLER

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

10  
11 GALE SOSTEK; and HERB SOSTEK,  
12 Plaintiffs,  
13 vs.  
14 COUNTY OF SAN BERNARDINO;  
and DOES 1-10, inclusive,  
15 Defendants.  
16

Case No. 5:23-cv-02236-MRA (MRWx)

**DEFENDANTS' NOTICE AND  
MOTION TO STAY PROCEEDINGS**

Trial Date: January 28, 2025

Pursuant to Rule 7-3 the Parties met and  
conferred regarding the substance of this  
Motion on August 1, 2024.

17 TO ALL PARTIES AND THE COUNSEL OF RECORD, PLEASE TAKE  
18 NOTICE THAT on August 1, 2024 Defendants COUNTY OF SAN BERNARDINO  
19 and SAMUEL FULLER will move to Stay the Proceedings on the grounds that the  
20 ongoing criminal investigation into Deputy Fuller by the California Department of  
21 Justice ("DOJ") will preclude Defendants from properly mounting a defense in this  
22 ongoing civil action. Counsel for Deputy Fuller has already indicated that should this  
23 action not be stayed, Deputy Fuller will affirmatively invoke his Fifth Amendment  
24 right against self-incrimination for the duration of these proceedings.

25 Defendant County will be unable to mount a full and fair defense in this action  
26 if it is unable to solicit testimony from Deputy Fuller about his objective beliefs  
27 concerning his own safety and the actions of Decedent Sostek which are critical to  
28

1 determine if the excessive force claims levied against Defendants are meritorious.  
 2 Because Deputy Fuller's objective beliefs at the time of the lethal force incident are  
 3 critical to establish whether Decedent Sostek's civil rights were violated, forcing this  
 4 action to proceed while Deputy Fuller is under active investigation will serve only to  
 5 prejudice the Defendants, waste judicial resources, and interfere with Defendants  
 6 ability to raise necessary arguments during the course of the litigation.

7 This Motion will be made and based upon this Notice of Motion, the  
 8 Memorandum of Points and Authorities, the Request for Judicial Notice, the  
 9 pleadings and records on file with this Court, any evidence of which this Honorable  
 10 Court may further take judicial notice prior to or at the hearing of this matter, and  
 11 upon such oral and documentary evidence as may be presented at the hearing of this  
 12 Motion.

13 This motion was filed following a meet and confer conference that occurred on  
 14 March 15, 2024 in compliance with Central District, Local Rule 7-3. Prior to filing  
 15 this Motion, Defendants attempted to secure a stipulation from Plaintiffs to stay this  
 16 action while the DOJ investigation is ongoing. Plaintiffs were unwilling to stipulate  
 17 forcing Defendants to file the instant Motion.

18  
 19 DATED: April 3, 2024

WESIERSKI & ZUREK LLP

20  
 21  
 22 By:



23 MICHELLE R. PRESCOTT  
 24 CHRISTOPHER P. WESIERSKI  
 25 Attorneys for Defendant, COUNTY OF  
 26 SAN BERNARDINO  
 27  
 28

**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION AND STATEMENT OF FACTS**

Defendants seek a stay in this matter until the conclusion of the California Department of Justice's ("DOJ") ongoing criminal investigation into Defendant SAMUEL FULLER ("Deputy Fuller") is concluded. As of the filing of this Motion, Deputy Fuller is under active investigation by the DOJ in connection with the lethal force encounter ("LFE") between himself and Decedent Sostek on March 12, 2023. (See Request for Judicial Notice ("RJN") Exhibit 1; Declaration of Michelle R. Prescott ("Prescott Decl.") ¶ 4). Defendants have already confirmed with Deputy Fuller and his counsel that Deputy Fuller intends to affirmatively invoke his Fifth Amendment right to self-incrimination for the duration of this action until such time as the investigation by the DOJ has concluded. (Prescott Decl. ¶ 5.)

Absent critical testimony from Deputy Fuller, Defendants will be materially prejudiced and unable to adequately defend themselves in this action because the pending claims brought by Plaintiffs under the Fourth and Fourteenth Amendments necessarily require testimony from Deputy Fuller concerning his reasonable and objective beliefs about his safety and the threat posed by Decedent Sostek at the time of the LFE. (Prescott Decl. ¶ 8-9.) Because Deputy Fuller alone is able to testify about these critical facts, Defendants will be unable to rebut any of Plaintiffs claims as currently pled if they are unable to solicit testimony from Deputy Fuller in light of the DOJ investigation. (*Id.*) Granting the stay as to Deputy Fuller alone would not cure this substantial prejudice because it would essentially force Defendant COUNTY OF SAN BERNARDINO ("County") to defend itself without being able to obtain Deputy Fuller's critical discovery and deposition testimony. (*Id.*)

Defendants attempted to enter into a stipulation to stay this action with Plaintiffs via email on March 13, 2024 prior to filing the instant Motion. (Prescott Decl. ¶ 6, Exh. A). Plaintiffs declined to stipulate to a stay leaving Defendants no choice but to file the instant Motion. (*Id.*) Plaintiffs did not offer any grounds for why

1 they refused to stipulate to a stay. (*Id.*) Defendants previously alerted the court to this  
2 refusal to stipulate in the Joint Case Management Statement filed by the parties on  
3 March 18, 2024. (Prescott Decl. ¶ 7, RJN Exh. 2.)

4 Defendants seek this stay in order to preserve their ability to fully participate  
5 in this litigation, to spare the Court the expense of forcing this proceeding to go  
6 forward absent the necessary testimony from Deputy Fuller, and in the interests of  
7 judicial economy.

## 8 **II. LEGAL ARGUMENT**

9 The Court has discretion to stay civil proceedings in favor of parallel criminal  
10 proceedings “when the interests of justice seem to require such action.” *Keating v.*  
11 *Office of Thrift Supervision*, 45 F.3d 322, 324 (9th Cir. 1995) (quoting *United States*  
12 *v. Kordel*, 397 U.S. 1, 12 n.27 (1970)). “The Ninth Circuit has held that a stay of civil  
13 proceedings pending the outcome of ‘parallel criminal proceedings’ is not required  
14 by the Constitution.” *Ancier v. Egan*, 2015 WL 12684466, at \*1 (D. Haw. Mar. 31,  
15 2015) (citing *Fed. Sav. & Loan Ins. Corp. v. Moynihan*, 889 F.2d 899, 902 (9th Cir.  
16 1989)); see also *Keating*, 45 F.3d 322 at 326 (“A defendant has no absolute right not  
17 to be forced to choose between testifying in a civil matter and asserting his Fifth  
18 Amendment privilege.”). In deciding whether to grant a stay, a court considers “the  
19 extent to which the defendant’s [F]ifth [A]mendment rights are implicated.” *Keating*,  
20 45 F.3d at 324. A court also considers the following factors:

- 21 (1) the interest of the plaintiffs in proceeding expeditiously with this litigation  
22 or any particular aspect of it, and the potential prejudice to plaintiffs of a delay;  
23 (2) the burden which any particular aspect of the proceedings may impose on  
24 defendants; (3) the convenience of the court in the management of its cases,  
25 and the efficient use of judicial resources; (4) the interests of persons not parties  
26 to the civil litigation; and (5) the interest of the public in the pending civil and  
27 criminal litigation 45 F.3d at 325.

28

**1. Plaintiffs Will Not Be Prejudiced by a Delay and Will Suffer Additional Prejudice if this Action is Not Stayed.**

While Defendants acknowledge that Plaintiffs have an interest in the expeditious disposal of their claims in litigation, Plaintiffs interests will not be served if Defendants are forced to proceed with this matter while Deputy Fuller remains under investigation by the DOJ. Should Defendants be forced to proceed, the parties will be unable to solicit pivotal testimony from Deputy Fuller concerning his objective beliefs at the time of the LFE. This testimony goes to the heart of the Fourth and Fourteenth amendment claims that are the subject of this action, and without this testimony neither party, including Plaintiffs, will be able to establish facts necessary for a determination of these claims on their merits.

Instead, the parties will essentially be forced to litigate blindly because Deputy Fuller, the sole individual who actually used lethal force against Decedent Sostek, has already indicated he will affirmatively invoke his Fifth Amendment right against self-incrimination and not provide any additional testimony until the investigation by the DOJ has concluded. (Prescott Decl. ¶ 5.) Accordingly, not only have Plaintiffs failed to substantiate that they will be prejudiced by the requested stay, Defendants have established that the parties as a whole will be prejudiced should the requested stay not be granted.

**2. Defendants Will Be Substantially Burdened If Forced to Litigate Blindly**

For the reasons discussed above, Defendants will be substantially burdened if forced to litigate this matter while Deputy Fuller is under investigation by the DOJ. (Prescott Decl. ¶ 8-9). Absent the testimony Defendants anticipate will be provided by Deputy Fuller once he is no longer in jeopardy of criminal proceedings, Defendants will be unable to adequately prepare for trial and establish their claims and defenses during the course of the litigation. (*Id.*) Defendants will also be unable to

1 meaningfully participate in the discovery process because Defendants have been  
 2 informed by Deputy Fuller's criminal counsel that Deputy Fuller will invoke his Fifth  
 3 Amendment rights against self-incrimination in connection with any discovery  
 4 propounded or depositions taken in connection with this action. (Prescott Decl. ¶ 5).  
 5 If forced to continue with this litigation, Defendants will be unable to rely on the  
 6 critical witness testimony of Deputy Fuller and be prejudiced. (Prescott Decl. ¶ 9).

### 7 **3. The Stay is in the Interest of Judicial Economy**

8 Absent the granting of the stay, Defendants will essentially be forced to be  
 9 participants in this litigation while being denied the ability to be full and vigorous  
 10 participants in light of the DOJ investigation into Deputy Fuller. Defendants will be  
 11 forced to attempt to rebut Plaintiffs claims, which arise out of and concern the actions  
 12 of Deputy Fuller and his corresponding objectively reasonable belief of imminent  
 13 severe bodily injury or death at the time of the LFE with Decedent Sostek, while being  
 14 unable to actually elicit any testimony from Deputy Fuller in light of him already  
 15 indicating he will invoke his Fifth Amendment right against self-incrimination.  
 16 (Prescott Decl. ¶ 5, 8-9).

17 While the proceedings may technically be "continuing forward" should the stay  
 18 not be granted, any ongoing proceedings will necessarily be frustrated by the parties  
 19 inability to obtain discovery or testimony from Deputy Fuller. The parties will be  
 20 unable to adequately advance this litigation without the testimony and discovery that  
 21 Deputy Fuller has already indicated will not be provided until the DOJ investigation  
 22 is concluded. Accordingly, it is in the interest of judicial economy to grant this stay  
 23 and prevent the parties from wasting judicial resources in the fruitless task of litigation  
 24 absent Deputy Fuller's critical discovery responses and deposition testimony.

### 25 **4. No Persons Not Party to this Litigation Will be Prejudiced if** 26 **the Stay is Granted**

27 Plaintiffs, as the sole real parties in interest in this action, will not be prejudiced  
 28 by the granting of the stay in this matter for the reasons discussed above. Plaintiffs



1 have thus far failed to identify a single person that is not a party to this action that will  
2 be prejudiced by the requested stay, and as of the filing of this Motion Defendants are  
3 unaware of any non-party that would be prejudiced by the granting of the stay.  
4 Granting the stay may even assist the non-party DOJ by allowing them adequate time  
5 to complete their ongoing criminal investigation into Deputy Fuller without having to  
6 juggle his participation in this action which could interfere with the DOJ investigation.  
7 Accordingly, no persons not party to this litigation will be prejudiced by the granting  
8 of the stay.

### 9                   **5. The Public's Interests are In Favor of a Stay**

10           Because this litigation involves claims of alleged excessive force on the part of  
11 Defendants and because Defendants serve a compelling public interest by providing  
12 police services to the general public, this litigation is a matter of public interest for  
13 the purposes of analyzing an application for a stay. Defendants do not deny this is a  
14 matter of great public importance. Instead, Defendants assert that because of the  
15 critical public importance of providing police services to the public, the public is  
16 entitled to have this matter fully and fairly litigated by the parties.

17           The public's interests would not be served if the parties are forced to try and  
18 conduct litigation by surprise without Deputy Fuller's discovery responses and  
19 deposition testimony. Rather this would serve only to undermine public trust in the  
20 judicial process because any determinations made without the testimony and  
21 discovery from Deputy Fuller would be made without critical evidence that is  
22 necessary for a full and complete factual finding. Granting the continuance would  
23 allow the parties to obtain this evidence and for Plaintiffs' claims to be completely  
24 disposed of in a manner that preserves the public's trust in the integrity and fairness  
25 of the judicial system and the Sheriff's Department. Accordingly, it is in the public  
26 interest to grant a stay of this matter until such time as the DOJ investigation is  
27 complete and the parties can litigate this matter on its merits and with all available  
28 evidence.

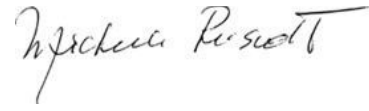
1 **III. CONCLUSION**

2 For the reasons set forth above, Defendants respectfully request that the Court  
3 grant its motion to stay all proceedings and enter an order directing that this case be  
4 stayed in its entirety pending the resolution of the DOJ investigation into Deputy  
5 Fuller.

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7 DATED: April 3, 2024

WESIERSKI & ZUREK LLP

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9  
10 By:



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12 Attorneys for Defendant, COUNTY OF  
13 SAN BERNARDINO  
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